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NOV 17 2005

Inventor: John J. Lettice, et al
Application No.: 09/747,311
Reply to OA of 07/18/2005
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Atty. Docket S-9-1

REMARKS

As set forth in the Office Action, Claims 1-28 were examined. Of these claims,

(i) Claims 1, 3-5, 7-12, 16-22, 24 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. patent 6,073,051 ("Sharkey"), and U.S. Patent no. 6,258,086 ("Ashley");

(ii) Claims 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sharkey or Ashley in view of the ordinary skill in the art;

(iii) Claims 2, 6, 13 -15, and 25-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all limitations of the base and intervening claims.

The Applicants acknowledge with thanks the indicated allowability of Claims 2, 6, 13 -15, and 25-27. However, in view of the following remarks and amendments to Claims 1 and 18, the Applicants request postponing rewriting of Claims 2, 6, 13 -15, and 25-27, pending reconsideration of the other claims in view of the following remarks.

Re. The rejection of Claims 1, 3-5, 7-12, 16-22, 24 and 28 under 35 U.S.C. 102(e) as being anticipated by Sharkey

Claim 1 is amended to specify that a sufficient high-frequency voltage is applied between the electrodes to generate plasma at the active electrode, such that tissue in the vicinity of the contained herniation is ablated with the plasma. Similarly, Claim 18 is amended to specify that a sufficient high-frequency voltage is applied to the electrodes to generate plasma at the active electrode, the high frequency voltage selected for ablating disc tissue at the target site with the plasma. Support for this amendment can be found for example at page 20, lines 21 to page 21, line 23.

Thus as amended the claims are not anticipated by Sharkey since Sharkey does teach or suggest the use of a sufficiently high RF voltage to generate plasma for ablating tissue, and thereby treat contained herniation.

Accordingly, withdrawal of the rejection and reconsideration of the claims are respectfully requested.

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Re. The rejection of Claims 1, 3-5, 7-12, 16-22, 24 and 28 under 35 U.S.C. 102(e) as being anticipated by Ashley

Similarly, regarding the rejection of claims under this heading, Ashley like Sharkey also does not teach the use of a sufficient high-frequency voltage at the electrodes to ablate tissue to treat contained herniation of an intervertebral disc. Accordingly, withdrawal of the rejection and reconsideration of the claims are respectfully requested.

Re. The rejection of Claim 23 under 35 U.S.C. 103 (a) as being unpatentable over Sharkey or Ashley in view of the ordinary skill in the art

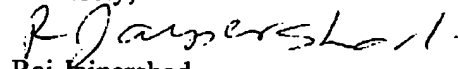
Similarly, regarding the rejection of claims under this heading, in Ashley, as it is in Sharkey, there is no suggestion that the voltage at the electrodes can be manipulated to generate plasma, such the plasma is used to ablate tissue and thereby treat contained herniation.

On the contrary, the thrust of Ashley and Sharkey is to shrink tissue by applying heat, and thereby reduce the herniation which is a procedure that one ordinary skilled would readily recognize is radically distinct and would not have been obvious from the Applicant's procedure wherein plasma, generated at the electrodes at a sufficient high voltage, is used to ablate the tissue. Accordingly, withdrawal of the rejection and reconsideration of the claims are respectfully requested.

SUMMARY

The Applicant's claims are patentable over the cited references and, in view of the amendment and remarks herein, reconsideration and allowance are respectfully requested. If an issue remains the can be resolved by a telephone conference, please contact the undersigned at telephone (408) 735-6486.

Sincerely,


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